

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

EDWARD NEIDERT,
Plaintiff,

vs.

HOWARD SKOLNIK, an individual,
STATE OF NEVADA, ex rel., its
DEPARTMENT OF CORRECTIONS,
a political subdivision of the State of
Nevada,

Defendants.

3:10-cv-0479-RCJ (RAM)

ORDER

Defendants have filed an Objection to Jury Demand (Doc. #15). Plaintiff has responded to Defendants' Objection (Doc. #16) and Defendants have replied (Doc. #17).

Plaintiff filed his Complaint in the First Judicial District Court of the State of Nevada in and for Carson City without accompanying the Complaint with a jury demand.

On August 3, 2010, Defendants removed the case to the federal district court and on September 2, 2010, Defendants answered the Complaint. Defendants did not demand a jury.

On September 22, 2010, Plaintiff filed a Jury Demand (Doc. #12).

In the state court in Nevada a party need not file a jury demand until the entry of the order first setting the case for trial. NRCP 38. This scenario is not covered by Fed. R. Civ. P. 81(c). It is, however, similar to New York where jury demands may be made shortly before trial. It has been held that in that scenario, the court will have discretion to allow a late jury demand. *See* Rule 38(b); *Felix-Hernandez v. American Airlines, Inc.*, 539 F.Supp.2d 511, 512 (D.P.R. 2007); *Ajnoha v. JC Penney Life Ins. Co.*, 480 F.Supp.2d 663, 676-77 (E.D.N.Y. 2007);

1 *Dreedlove v. Cabou*, 296 F.Supp.2d 253, 278 (N.D.N.Y. 2003).

2 Under the circumstances of this case, the court exercises its discretion and allows the
3 jury demand filed by the Plaintiff.

4 Defendants' Objection to Jury Demand (Doc. #15) is **DENIED**.

5 DATED: November 16, 2010.



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8 UNITED STATES MAGISTRATE JUDGE
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